

Remarks

Claims 24, 25 and 44 have been canceled. Review and reconsideration in view of the amendments and remarks below are respectfully requested.

Claims 1-24 and 26-45 are rejected as being obvious over U.S. Pat. No. 5,053,957 to Suzuki in view of U.S. Pat. No. 6,128,599 to Walker. As previously noted, the Suzuki reference discloses a system for tracking discounts that is implemented on an electronic cash register. Differing types of purchasers (stockholder, employees, members and guests) receive varying levels of discounts for their purchases (column 2, lines 4-7). The system and method of the Suzuki reference appears to be nothing more than an electronic cash register programmed to track and immediately apply the appropriate discount levels to a single purchase (see column 1, lines 8-12).

The Walker '599 reference discloses a system for tracking financial accounts, (i.e. credit cards), and is not directed to tracking purchases. Instead, Walker '599 focuses upon, and rewards, the collective purchases of a group (i.e. an affinity group such as a college alumni group (column 1, lines 23-24)).

The Office action has proposed combining the Suzuki and Walker references. As an initial matter, it is noted that the exact manner in which the references would be combined is unclear to Applicants. Upon an review of the Office action, it appears that the Office action proposes a system in which the Suzuki and Walker references are simultaneously implemented. In particular, at page 3, lines 4 and 5 of the Office action, it is indicated that it would have been obvious to "have applied the cumulative purchases of '599 to the reward system of '957." At lines 11-14, it is indicated that corresponding buyers of different levels to the affinity groups of '599 would provide an incentive "*in addition to* the incentive provided by the buyer level discounts of '975." Finally, at page 3, lines 17-18, the Office action refers to "*the combination of* '957's discount levels and '599's cumulative tracking and rewards."

Thus, under this interpretation, the Office action appears to construe the references such that the reward systems of '957 and '599 are both simultaneously applied, in their unaltered states, to multiple transactions. In this case, for example, the '957 (Suzuki) reference could arguably be applied to the first two steps of claim 1, and the '599 (Walker) reference could arguably be applied to the last two steps of claim 1.

In order to gain a fuller understanding of the rejection, the undersigned had brief telephone conversation with the Examiner on December 6, 2007. The undersigned would like to again thank the Examiner for taking the time to discuss this case. In that telephone conversation, the Examiner indicated that he believed the references were not combined in an overlapping manner as outlined above. Instead, the Examiner explained, the references were combined such that the Suzuki reference is modified by the Walker reference. In particular, the Examiner indicated that the rejection of claim 1 is based mostly upon the Suzuki reference, and the Walker reference is simply applied to modify the Suzuki reference such that the reward system (of Suzuki) is applied over multiple transactions.

However, under either interpretation, it is submitted that the subject matter of claim 1 is not shown in the combined references. In order to provide a complete response, comments below are provided to address both interpretations.

Claim 1 specifies that, under the "providing" step, a single reward is provided "to said customer based at least in part upon the customer's cumulative purchases. . . ." In contrast, however, the Walker reference does not disclose providing a reward to a customer. Instead, the Walker reference discloses providing a reward to the *sponsor of an affinity group* (i.e. an alumni association). For example, a column 1, lines 16-21 of Walker, it is disclosed that the invention relates to a method and system of managing a reward offer "to benefit an affinity group sponsor." In the description of its system, the Walker reference specifically indicates that the *sponsor of an affinity group* receives the reward (see column 4, lines 50-62). At column 3, lines 61-62, the Walker reference makes clear that credit card holders are *members* of an affinity group sponsored by an affinity group sponsor, thus making clear that credit card holders are different and distinct from an affinity group sponsor.¹

Accordingly, under the first interpretation of the Office action, the "providing" step is not met by the Walker reference on the basis that the Walker reference does not provide a reward to

¹ The Walker reference does disclose notifying credit card holders of the reward *offer* (but not actually awarding the reward to the credit card holder) at column 4, lines 18-26. Moreover, at column 11, lines 14-26, the Walker reference discloses providing a reward to individual card members, but that reward is only provided when a customer provides a referral which turns into a new membership, and therefore is completely distinct and separate from purchase transactions which are the specific matter of claim 1 and the Suzuki reference.

"said customer." Instead, under Walker, the reward is provided to an affinity group sponsor, and no reward is provided to the individual credit card holder.

Under the second interpretation the specific manner of claim 1 is also not shown. In particular, if the Suzuki reference were to be modified by the Walker reference such that rewards were provided based upon cumulative purchases, then the associated reward would be provided to the sponsor of an affinity group, as clearly specified in Walker. Thus, it is submitted that the subject matter of claim 1 is not shown.

In addition, the "tracking" step of claim 1 is not shown in the combined references. In particular, that step requires tracking a customer's purchases "in at least the selected product categories over a plurality of discrete purchase transactions." The Suzuki reference does not track customer purchases over a plurality of discrete purchase transactions, as that system is only implemented in a single, real-time transaction. Conversely, the Walker reference does not disclose tracking purchases in "selected product categories" over a plurality of discrete purchase transactions. Instead, Walker merely tracks aggregated purchase amounts, but is not disclosed to track any particular nature or category of purchased products. Accordingly, it is submitted that the subject matter of claim 1 is not shown, even when the Suzuki and Walker references are combined.

Independent claim 26 is directed to a system for tracking and calculating customer rewards, and specifies that the computer calculates a "single reward for each customer based at least in part upon the customer's cumulative discrete purchase transactions." In contrast, as noted above, the Suzuki reference does not disclose calculating a reward based upon cumulative discrete purchase transactions. Moreover, the Walker '599 patent does not disclose calculating a reward for a "customer," and instead calculates a reward for the sponsor of an affinity group.

Claim 33 is directed to a software device including a tracking module for tracking customer purchases for a plurality of discrete transactions. The claimed software device further includes a calculating module for calculating a single reward for each customer based at least in part upon the cumulative tracked plurality of discrete customer purchases. In contrast, the Suzuki reference does not disclose tracking purchases for a plurality of discrete transactions, and also does not disclose calculating a reward based upon a plurality of discrete customer purchases. The Walker reference fails to disclose calculating a reward for a "customer" based upon the

customer's purchases. Thus, if the Walker reference were to be combined with the Suzuki reference, the subject matter of claim 33 would not be shown.

Finally, the remaining independent claim (claim 45) distinguishes over the cited references for the same or similar reasons as claim 1 as the other independent claims, discussed above.

The present application discloses a true reward/discount program which is set up and run in a completely different manner than the electronic cash register of the Suzuki reference or the affinity card program of the Walker reference. In one embodiment, the store or chain determines a plurality of product categories such as "frozen foods and ice cream," "fresh produce," "pet foods and supplies," or the like. Customers may then be invited to sign up for the program and select any number of the product categories. Once the product categories have been selected, the customers' purchases in at least the select product categories may be tracked. The program may be run for a discrete period of time, after which the program ends and purchases in each selected category may be totaled. A reward or rebate based upon the purchases and selected category may be calculated. Thus, the system is a true reward "program" and is distinct from the simple instant discount program of the Suzuki reference, and the affinity card program of the Walker reference, even when those two references are combined.

In sum, as outlined above, it is submitted that each of independent claims distinguish over the cited references. Accordingly, it is submitted that the application is in a condition for allowance, a formal notice of thereof is respectfully solicited.

Respectfully submitted,

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